

# The Shopfront

YOUTH LEGAL CENTRE

NSW Law Reform Commission  
GPO Box 5199  
SYDNEY NSW 2001

7 September 2012

By email

Dear Sir/Madam

## **Sentencing: Question Paper 8: Structure and hierarchy of sentencing options**

The Shopfront Youth Legal Centre welcomes the opportunity to make a submission to this reference.

### **About the Shopfront Youth Legal Centre**

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. Established in 1993 and based in Darlinghurst in inner-city Sydney, the Shopfront is a joint project of Mission Australia, the Salvation Army and the law firm Freehills.

The Shopfront's main area of practice is criminal law. Two of our solicitors are accredited specialists in criminal law; one is also an accredited specialist in children's law. Our four solicitors appear almost daily for vulnerable young people in the Local, Children's, District and occasionally Supreme Courts.

The Shopfront's clients come from a range of cultural backgrounds, including a sizeable number of indigenous young people. Common to nearly all of our clients is the experience of homelessness: most have been forced to leave home due to abuse, neglect, domestic violence or extreme family dysfunction. Most of our clients have limited formal education and therefore lack adequate literacy, numeracy and vocational skills. A substantial proportion also have a serious mental health problem or an intellectual disability, often co-existing with a substance abuse problem.

### **Scope of this submission**

Although the Shopfront is a youth legal service, and has expertise in children's matters, the majority of our clients are in fact young adults aged 18 to 25. We therefore have an extensive working knowledge of adult sentencing law and practice. In accordance with the terms of reference, our submission is confined to adult sentencing issues.

Time does not permit us to make a more comprehensive submission. However, we would welcome the opportunity to make further comments or to attend consultations if you consider this would be helpful. In this regard, please do not hesitate to contact me, preferably by email at [jane.sanders@freehills.com](mailto:jane.sanders@freehills.com)

Yours faithfully

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The Shopfront Youth Legal Centre is a service provided by Freehills in association with Mission Australia and The Salvation Army



Mission Australia

Freehills

## **Sentencing: Question Paper 8: The structure and hierarchy of sentencing options**

### **Question 8.1: Hierarchy of sentences**

#### **Should the Crimes (Sentencing Procedure) Act 1999 (NSW) set out a hierarchy of sentences to guide the courts? What form should such a hierarchy take?**

The *Crimes (Sentencing Procedure) Act* already provides a hierarchy of sorts; at least, this is the way it is commonly understood by practitioners and courts. We do not see the need for a more formal hierarchy of sentencing options.

There is also a danger that a formal hierarchy may result in a loss of flexibility. It may be difficult to place each sentencing option precisely within this hierarchy. For example, a fine is generally thought to be less onerous than a section 9 bond, but for many of our clients a fine is a more onerous sentencing option because of the lack of capacity to pay. Similarly, a community service order may be more onerous than a suspended sentence although it is generally understood to be lower down in the hierarchy.

### **Question 8.2: The need for flexibility**

#### **Should the structure of sentences be made more flexible by:**

##### **a. creating a single omnibus community-based sentence with flexible components;**

Conflating all community-based sentences into one may pose some problems.

The current range of community-based sentencing options forms a hierarchy of sorts, and the ability to impose one of these options in preference to another allows the court to communicate its views about the severity of the offence. There are also different responses to a breach depending on the nature of the community-based order imposed. We are concerned that a single order allowing for numerous conditions may foster more onerous sentencing outcomes and may also impact adversely on transparency and consistency.

##### **b. creating a sentencing hierarchy but with more flexibility as to components;**

As discussed in our response to Question 8.1, we do not believe there is a need for sentencing hierarchy beyond the one that is currently generally understood to exist.

##### **c. allowing the combination of sentences; or**

We believe it would be useful if the courts were permitted to impose certain combinations of sentences, particularly a bond in combination with a community service order, or possibly a fine in conjunction with a section 10 bond.

However, there is a potential for net-widening, and this would have to be given careful consideration. We note that it is currently possible to impose a section 9 bond in combination with a fine. Our clients are frequently sentenced to section 9 bonds but rarely is a fine also imposed. This suggests that magistrates have some appreciation of our clients' lack of capacity to pay, and believe that there is little to be achieved by imposing a fine.

##### **d. adopting any other approach?**

We do not have any suggestions for alternative approaches.

### **Question 8.3: Particular sentencing combinations**

#### **1 What sentence or sentence component combinations should be available?**

We believe this needs careful thought so as to provide flexibility without inappropriate net widening.

In principle we support the combination of:

- A section 9 or section 12 bond combined with a Community Service Order;
- A fine combined with a section 10(1)(a) dismissal or section 10(1)(b) bond;
- A relatively short fixed term of imprisonment followed by a section 9 bond.

## **2 Should there be limits on combinations with:**

### **a. fines;**

In general, we do not support fines being imposed in combination with other sentencing options with a strong punitive element (e.g. imprisonment, CSO).

### **b. imprisonment; or**

We support, in principle, the combination of a fixed term of imprisonment with a bond, as outlined in the Question Paper. This would allow the court to impose a short custodial sentence where it is thought that custody is absolutely necessary for the purposes of punishment or deterrence, or to allow the offender to stabilise and make proper arrangements for their release into the community. This would be followed by a section 9 bond, which would allow the offender to be subject to a longer period of supervision than would be permissible under a parole order. It would also provide much greater flexibility and fairness in the event of a breach.

In general we do not support the combination of imprisonment with other sentencing options whose purpose is primarily punitive (e.g. a fine or a CSO).

### **c. good behaviour requirements?**

We do not support the imposition of a good behaviour requirement in combination with any other sentence, except in the situation where a bond is imposed in conjunction with a fine or CSO.

**The Shopfront Youth Legal Centre  
September 2012**